

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff

vs.

No.: 20CR01867-MV

JOSHUA GUTIERREZ,

Defendant.

DEFENDANT'S RESPONSE TO GOVERNMENT'S SENTENCING

MEMORANDUM

Joshua Gutierrez, by and through his attorney, Sylvia Baiz, Assistant Federal Public Defender, files the following response to the government's sentencing memorandum.

The instant case exemplifies the reasons for the bargaining process and why a defendant, although having some type of defense, may choose to plead guilty instead. There were facts in favor of and against proceeding to trial. Joshua Gutierrez chose to plead guilty because in fact he is guilty of shooting and killing John Doe, but based on the circumstances in his case a sentence of 12 years is an eminently reasonable sentence.

There are always two sides to every story. As the government acknowledges, Joshua would have presented a defense of self-defense to the shooting of John Doe. The reason there was bad blood between John Doe and Joshua was because Joshua had been stabbed by John Doe and his brother MK. There is evidence in the Navajo report attached to the government's sentencing memorandum that Joshua may have gone to the home of John Doe's mother 6 months ago and damaged the front door. However, it appears that she called the police not to report that her front door was damaged or that she received a threat, but to report that people were fighting outside her house. When police arrived there were several men standing around Joshua after John Doe and MK had beaten Joshua and stabbed him. At most Joshua was an angry young drunken man who could not discern that the consequences of his actions would lead to his own stabbing.

The government argues naively that, "On March 29, 2020, John Doe went to L.P.'s house for purely innocuous reasons; he was not seeking out Defendant to hurt or fight him. (PSR ¶ 17.) Rather, John Doe was part of a group that wanted to "kick back" with L.P. (*Id.*) The group included John Doe's brother, M.K., John Doe's cousin, J.L., and M.K.'s girlfriend. (PSR ¶ 12.) The group arrived at L.P.'s house in the early morning hours of March 29, 2020 after a night out. L.P. invited the group into his room to drink, smoke, and hang out. (PSR ¶ 17.)" Joshua's girlfriend Ciara was John Doe's ex-girlfriend. She and Joshua lived at L.P.'s

house. The question remains, why would two people who had previously stabbed and beaten Joshua believe it was o.k. to go to the home he shared with John Doe's ex-girlfriend (Ciara) and her family and party with her father. It appears that John Doe had no affinity with his ex-girlfriend, Ciara, as John Doe had custody of the son he had with Ciara and prevented her from helping raise the boy or even visit with him.

Although the government insists that, "John Doe was a nuisance and an irritant, not a serious threat to Defendant's safety." (GB 4) The fact remains that John Doe and his brother MK gravely assaulted and injured Joshua Gutierrez six months earlier and he had reason to fear for his life when he saw them on the night of March 29th. This was also the reason Joshua yelled at them to leave the house with the gun in hand. Initially JL and MK, John Doe's brother and companion lied to FBI after the shooting stating that MK was not around. This is because MK was on federal probation and had a record for committing crimes of violence.¹

¹ See convictions for assaulting his father in case no. 06-cr-1167-JC for biting his ear off and stabbing him and case no. 12-CR-00348 for stabbing an inmate while serving time at US Penitentiary in Florence, Colorado. As well, John Doe had convictions for aggravated assault, case D0-jr-2006-00442 and conspiracy to commit armed robbery with a deadly weapon in D202-CR-2009-0315.

CONCLUSION

Mr. Gutierrez respectfully requests the Court sentence him to the 12-year sentence agreed to by the parties. Mr. Gutierrez has been in custody since his arrest in the instant case on March 30, 2020.

Dated: March 11, 2021

Respectfully submitted,
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/s [Electronically filed 3-11-21]
SYLVIA A. BAIZ, AFPD